

AMENDED IN SENATE JULY 17, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1740**

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**Introduced by Committee on Revenue and Taxation (Chavez  
(Chair), Laird, Leno, and Simitian)**

March 11, 2003

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An act to amend Sections 17041, 17052.6, 17301.3, ~~and 17302~~  
~~17302, and 19131~~ of, and to add Section 19136.11 to, the Revenue and  
Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1740, as amended, Committee on Revenue and  
Taxation. Income taxes: nonresidents.

The Personal Income Tax Law provides for specified treatment and  
calculations with respect to the taxation of the income of nonresidents  
and part-year residents.

This bill would provide that in calculating the taxable income of a  
nonresident or part-year resident, the calculation of prior year items is  
to be made as if the nonresident or part-year resident, for the period of  
nonresidency, was a nonresident for all prior years, would correct a  
cross-reference, and would waive estimated penalties in connection  
thereto. This bill would also change a cross-reference relating to  
adjusted gross income in connection with the child and dependent care  
tax credit.

*The Personal Income Tax Law imposes a penalty on a taxpayer who  
fails to file a return on or before a prescribed due date, unless the failure  
is due to reasonable cause and not due to willful neglect.*

*This bill would provide that the late filing penalty is presumed not to apply if the taxpayer filed a federal return after its due date, the Franchise Tax Board proposes a deficiency based upon a final federal determination, and the Internal Revenue Service abates the federal late filing penalty based upon reasonable cause.*

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1	SECTION 1. Section 17041 of the Revenue and Taxation	
2	Code is amended to read:	
3	17041. (a) There shall be imposed for each taxable year upon	
4	the entire taxable income of every resident of this state who is not	
5	a part-year resident, except the head of a household as defined in	
6	Section 17042, taxes in the following amounts and at the following	
7	rates upon the amount of taxable income computed for the taxable	
8	year as if the resident were a resident of this state for the entire	
9	taxable year and for all prior taxable years for any carryover items,	
10	deferred income, suspended losses, or suspended deductions:	
11		
12	If the taxable income is:	The tax is:
13	Not over \$3,650 . . . . .	1% of the taxable income
14	Over \$3,650 but not	
15	over \$8,650 . . . . .	\$36.50 plus 2% of the excess over
16		\$3,650
17	Over \$8,650 but not	
18	over \$13,650 . . . . .	\$136.50 plus 4% of the excess over
19		\$8,650
20	Over \$13,650 but not	
21	over \$18,950 . . . . .	\$336.50 plus 6% of the excess over
22		\$13,650

Over \$18,950 but not	
over \$23,950 .....	\$654.50 plus 8% of the excess over
	\$18,950
Over \$23,950 .....	\$1,054.50 plus 9.3% of the excess
	over \$23,950

(b) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident, except the head of a household as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the "taxable income of a nonresident or part-year resident," as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(c) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident for that taxable year, when the resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of the state for the entire taxable year and for all prior taxable years for carryover items, deferred income, suspended losses, or suspended deductions:

If the taxable income is:	The tax is:
Not over \$7,300 .....	1% of the taxable income
Over \$7,300 but not	
over \$17,300 .....	\$73 plus 2% of the excess
	over \$7,300
Over \$17,300 but not	
over \$22,300 .....	\$273 plus 4% of the excess
	over \$17,300

1	Over \$22,300 but not	
2	over \$27,600 .....	\$473 plus 6% of the excess
3		over \$22,300
4	Over \$27,600 but not	
5	over \$32,600 .....	\$791 plus 8% of the excess
6		over \$27,600
7	Over \$32,600 .....	\$1,191 plus 9.3% of the excess over
8		\$32,600

9  
10 (d) (1) There shall be imposed for each taxable year upon the  
11 taxable income of every nonresident or part-year resident when the  
12 nonresident or part-year resident is the head of a household, as  
13 defined in Section 17042, a tax as calculated in paragraph (2).

14 (2) The tax imposed under paragraph (1) shall be calculated by  
15 multiplying the "taxable income of a nonresident or part-year  
16 resident," as defined in subdivision (i), by a rate (expressed as a  
17 percentage) equal to the tax computed under subdivision (c) on the  
18 entire taxable income of the nonresident or part-year resident as if  
19 the nonresident or part-year resident were a resident of this state  
20 for the taxable year and as if the nonresident or part-year resident  
21 were a resident of this state for all prior taxable years for any  
22 carryover items, deferred income, suspended losses, or suspended  
23 deductions, divided by the amount of that income.

24 (e) There shall be imposed for each taxable year upon the  
25 taxable income of every estate, trust, or common trust fund taxes  
26 equal to the amount computed under subdivision (a) for an  
27 individual having the same amount of taxable income.

28 (f) The tax imposed by this part is not a surtax.

29 (g) (1) Section ~~1-(g)-1(g)~~ of the Internal Revenue Code,  
30 relating to certain unearned income of minor children taxed as if  
31 the parent's income, shall apply, except as otherwise provided.

32 (2) Section 1(g)(7)(B)(ii)(II) of the Internal Revenue Code,  
33 relating to income included on parent's return, is modified, for  
34 purposes of this part, by substituting "1 percent" for "15  
35 percent."

36 (h) For each taxable year beginning on or after January 1, 1988,  
37 the Franchise Tax Board shall recompute the income tax brackets  
38 prescribed in subdivisions (a) and (c). That computation shall be  
39 made as follows:

1 (1) The California Department of Industrial Relations shall  
2 transmit annually to the Franchise Tax Board the percentage  
3 change in the California Consumer Price Index for all items from  
4 June of the prior calendar year to June of the current calendar year,  
5 no later than August 1 of the current calendar year.

6 (2) The Franchise Tax Board shall do both of the following:

7 (A) Compute an inflation adjustment factor by adding 100  
8 percent to the percentage change figure that is furnished pursuant  
9 to paragraph (1) and dividing the result by 100.

10 (B) Multiply the preceding taxable year income tax brackets by  
11 the inflation adjustment factor determined in subparagraph (A)  
12 and round off the resulting products to the nearest one dollar (\$1).

13 (i) (1) For purposes of this part, the term “taxable income of  
14 a nonresident or part-year resident” includes each of the  
15 following:

16 (A) For any part of the taxable year during which the taxpayer  
17 was a resident of this state (as defined by Section 17014), all items  
18 of gross income and all deductions, regardless of source.

19 (B) For any part of the taxable year during which the taxpayer  
20 was not a resident of this state, gross income and deductions  
21 derived from sources within this state, determined in accordance  
22 with Article 9 of Chapter 3 (commencing with Section 17301 and  
23 Chapter 11 (commencing with Section 17951).

24 (2) For purposes of computing “taxable income of a  
25 nonresident or part-year resident” under paragraph (1), the  
26 amount of any net operating loss sustained in any taxable year  
27 during any part of which the taxpayer was not a resident of this  
28 state shall be limited to the sum of the following:

29 (A) The amount of the loss attributable to the part of the taxable  
30 year in which the taxpayer was a resident.

31 (B) The amount of the loss which, during the part of the taxable  
32 year the taxpayer is not a resident, is attributable to California  
33 source income and deductions allowable in arriving at taxable  
34 income of a nonresident or part-year resident.

35 (3) For purposes of computing “taxable income of a  
36 nonresident or part-year resident” under paragraph (1), any  
37 carryover items, deferred income, suspended losses, or suspended  
38 deductions shall only be includable or allowable to the extent that  
39 the carryover item, deferred income, suspended loss, or suspended  
40 deduction was derived from sources within this state, calculated as

1 if the nonresident or part-year resident, for the portion of the year  
 2 he or she was a nonresident, had been a nonresident for all prior  
 3 years.

4 SEC. 2. Section 17052.6 of the Revenue and Taxation Code  
 5 is amended to read:

6 17052.6. (a) For each taxable year beginning on or after  
 7 January 1, 2000, there shall be allowed as a credit against the “net  
 8 tax” (as defined in Section 17039) an amount determined in  
 9 accordance with Section 21 of the Internal Revenue Code, as  
 10 modified by the Economic Growth and Tax Relief Reconciliation  
 11 Act of 2001 (Public Law ~~107-16~~ 107-116), except that the amount  
 12 of the credit shall be a percentage, as provided in subdivision (b)  
 13 of the allowable federal credit without taking into account whether  
 14 there is a federal tax liability.

15 (b) For the purposes of subdivision (a), the percentage of the  
 16 allowable federal credit shall be determined as follows:

17 (1) For taxable years beginning before January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
\$40,000 or less . . . . .	63%
Over \$40,000 but not over \$70,000 . . . . .	53%
Over \$70,000 but not over \$100,000 . . . . .	42%
Over \$100,000 . . . . .	0%

26 (2) For taxable years beginning on or after January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
\$40,000 or less . . . . .	50%
Over \$40,000 but not over \$70,000 . . . . .	43%
Over \$70,000 but not over \$100,000 . . . . .	34%
Over \$100,000 . . . . .	0%

35 (c) In the case of a taxpayer whose credits provided under this  
 36 section exceed the taxpayer’s tax liability computed under this  
 37 part, the excess shall be credited against other amounts due, if any,  
 38 from the taxpayer and the balance, if any, shall be paid from the  
 39 Tax Relief and Refund Account and refunded to the taxpayer.

(d) For purposes of this section, adjusted gross income means adjusted gross income as computed for purposes of paragraph (2) of subdivision (h) of Section 17024.5.

(e) The credit authorized by this section shall be limited to employment-related expenses, within the meaning of Section 21 of the Internal Revenue Code, but only for child care services or care provided in this state and only to the extent of earned income (within the meaning of Section 21(d) of the Internal Revenue Code) from sources within this state.

(f) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child (as defined in Section 151(c)(3) of the Internal Revenue Code) shall be treated, for purposes of Section 152 of the Internal Revenue Code (as applicable for purposes of this section), as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a “custodial parent” (within the meaning of Section 152(e) of the Internal Revenue Code, as applicable for purposes of this section), and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who live apart at all times during the last six months of the calendar year.

(2) The child is in the custody of one or both of his or her parents for more than one-half of the calendar year.

(g) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2002.

SEC. 3. Section 17301.3 of the Revenue and Taxation Code is amended to read:

17301.3. For purposes of this part, in the case of a nonresident or part-year resident, the term “California adjusted gross income” includes each of the following:

(a) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income, regardless of source.

(b) For any part of the taxable year during which the taxpayer was not a resident of this state, adjusted gross income derived from sources within this state, determined in accordance with Article 9 (commencing with Section 17301) of Chapter 3 and Chapter 11 (commencing with Section 17951).

SEC. 4. Section 17302 of the Revenue and Taxation Code is amended to read:

17302. In the case of a nonresident or part-year resident, the deduction provided by Section 215 of the Internal Revenue Code, relating to alimony payments, shall be allowed in computing “taxable income of a nonresident or part-year resident” in the same ratio (not to exceed 1.00) that California adjusted gross income (as defined in Section 17301.3), computed without regard to the alimony deduction, bears to total adjusted gross income (as defined in Section 17301.4), computed without regard to the alimony deduction.

SEC. 5. *Section 19131 of the Revenue and Taxation Code is amended to read:*

19131. (a) If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return (determined without regard to any extension of time for filing) and the date on which filed, but the total penalty ~~shall~~ *may* not exceed 25 percent of the tax. In the case of a commencing corporation, the penalty shall apply to all tax accruable on the due date of the return. The penalty so added to the tax shall be due and payable upon notice and demand from the Franchise Tax Board.

(b) In the case of an individual or fiduciary who fails to file a return of tax required by this part within 60 days of the date prescribed for filing of that return (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to willful neglect, this penalty ~~shall~~ *may* not be less than the lesser of one hundred dollars (\$100) or 100 percent of the amount of tax required to be shown on the return.

(c) For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part



1 of the tax which is paid on or before the date prescribed for  
2 payment of the tax and by the amount of any credit against the tax  
3 which may be claimed upon the return.

4 (d) If any failure to file any return is fraudulent, subdivision (a)  
5 shall be applied by:

6 (1) Substituting “15 percent” for “5 percent,” and

7 (2) Substituting “75 percent” for “25 percent.”

8 (e) This section ~~shall~~ does not apply to any failure to pay any  
9 estimated tax required by Section 19025 or 19136.

10 (f) (1) *The penalty described in this section is presumed not to*  
11 *apply if, with respect to the same taxable year, all of the following*  
12 *conditions are met:*

13 (A) *A taxpayer fails to make and file a return required by this*  
14 *part on or before the due date of the return, determined with regard*  
15 *to any extension of time for filing, and fails to make and file a return*  
16 *required by Section 6012 of the Internal Revenue Code on or*  
17 *before the due date of the return, determined with regard to any*  
18 *extension of time for filing.*

19 (B) *The Franchise Tax Board proposes a deficiency assessment*  
20 *that is based upon a final federal determination.*

21 (C) *The Commissioner of Internal Revenue or other officer of*  
22 *the United States determines that the penalty described in Section*  
23 *6651(a)(1) of the Internal Revenue Code does not apply because*  
24 *the failure to file the federal return on or before the date prescribed*  
25 *for its filing was due to reasonable cause and not due to willful*  
26 *neglect.*

27 (2) *The Franchise Tax Board may rebut the presumption*  
28 *described in paragraph (1) by establishing, by a preponderance of*  
29 *the evidence, that the taxpayer’s failure to make and file a return*  
30 *required by this part was not due to reasonable cause or was due*  
31 *to willful neglect.*

32 SEC. 6. Section 19136.11 is added to the Revenue and  
33 Taxation Code, to read:

34 19136.11. (a) No addition to tax shall be made under Section  
35 19136 for any period before April 15, 2003, with respect to any  
36 underpayment of an installment for the 2002 taxable year, to the  
37 extent that the underpayment was created or increased by any  
38 provision of Chapter 920 of the Statutes of 2001.

39 (b) The Franchise Tax Board shall implement this section in a  
40 reasonable manner.

1     ~~SEC. 6.—~~

2     *SEC. 7.* This act provides for a tax levy within the meaning  
3 of Article IV of the Constitution and shall go into immediate  
4 effect.

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